

# Court of Appeals, State of Michigan

## ORDER

Michigan Municipal Risk Management Authority v Randy Boos

Docket No. 304199

LC No. 10-025193-CK

Michael J. Kelly  
Presiding Judge

Peter D. O'Connell

Patrick M. Meter  
Judges

The Court orders that the motion for immediate consideration is GRANTED. The motion to extend time to file appellant's brief in response to the motion to dismiss is also GRANTED. Further, appellee's motion to file a reply brief is GRANTED.

The motion to dismiss pursuant to MCR 7.211(C)(2) is GRANTED for the reason that the claim of appeal is not within the Court of Appeals jurisdiction. The May 3, 2011 order denying a motion for reconsideration is plainly not a final order appealable of right. MCR 7.202(6)(a); MCR 7.203(A). Further, the claim of appeal cannot be saved by treating it as being taken from the March 7, 2011 order because that order is also not a final order appealable of right. The March 7, 2011 order is not a final order under MCR 7.202(6)(a)(i) because it does not dispose of any claim in this case, but only denies appellant's motion(s) to have the trial court set aside an earlier default and default judgment. Moreover, a trial court's certification of an order as final is not controlling. *Faircloth v Family Independence Agency*, 232 Mich App 391, 400-401; 591 NW2d 314 (1998). Indeed, it is apparent that the final order under MCR 7.202(6)(a)(i) is the August 19, 2010 default judgment against defendant Randy Boos, but no timely claim of appeal was filed from that default judgment. See MCR 7.204(A)(1)(a)-(b). In this regard, *John W Masury & Son v Lowther*, 299 Mich 516, 526; 300 NW 866 (1941), and *H & L Heating Co v Bryn Mawr Apartments*, 97 Mich App 496, 503; 296 NWd 354 (1980), do not support a conclusion that there is no time limit for bringing an appeal of right where the lower court either actually or allegedly lacked jurisdiction to enter the order appealed from.

We note that appellant may seek to appeal by filing a delayed application for leave to appeal under MCR 7.205(F) from the August 19, 2010 default judgment or any subsequent circuit court order in this case that she desires to appeal.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JUL 25 2011

Date

  
Chief Clerk